



IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No.

B. A. KAUSAL,

Petitioner,

vs.

79TH AND ESCANABA CORPORATION,
A CORPORATION,

Respondent.

**BRIEF IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI.**

I.

OPINIONS OF COURTS BELOW.

No opinion was rendered by the District Court for the Northern District of Illinois, Eastern Division, except as to the findings set forth in full in the record at pages 59 and 60. The opinion of the Circuit Court of Appeals for the Seventh Circuit is copied at pages 72 to 76 of the record and is reported in 129 Fed. (2d) 173.

II.

JURISDICTION.

The opinion of the Circuit Court of Appeals was filed June 25, 1942. The statutory provision which is believed to sustain the jurisdiction of this Court is Section 240-A of the Judicial Code as amended by the Act of February 13, 1925 (U. S. C. A., Sec. 347-A). The jurisdiction of this Court to review the cause by certiorari is sustained by:

Magnam v. Coty, 262 U. S. 159, 162

Forsyth v. Hammond, 166 U. S. 506

(Conflict between decisions of Circuit Court of Appeals and a State Constitution)

III.

STATEMENT OF THE CASE.

This is an application for a writ of certiorari for a review of the decree of the U. S. Circuit Court of Appeals for the Seventh Circuit affirming an order of the U. S. District Court for the Northern District of Illinois, Eastern Division.

The material facts and the questions involved are set forth in the preceding petition under I (pages 2-4) which is hereby adopted and made a part of this brief.

The question for decision is whether a restraining order which restrains all persons from communicating with the bondholders of the debtor corporation or the stockholders of its successor corporation without first submitting such communications for approval to the court is a violation of free speech under the Federal and Illinois

State Constitutions, and whether the Court had power to enter such an order where it patently was unnecessary for carrying out any plan of reorganization after it had entered a decree of confirmation in the proceedings.

IV.

SPECIFICATION OF ERRORS.

The Circuit Court of Appeals erred:

1. In disregarding petitioner's reliance on the point that the jurisdiction of a court of bankruptcy to enter a restraining order prohibiting communications to be sent to bondholders of a reorganized corporation or stockholders of the successor corporation without first submitting such communications for approval to the court, was terminated by the entry of the decree of confirmation.

2. In not finding that the restraining order in question was on its face non-essential to the carrying out of a plan of reorganization and that therefore such restraining order was without the powers of the court to enter after a confirmatory decree.

3. In holding that the court did not lack jurisdiction to enter the restraining order after the property of the debtor had passed to the new corporation.

4. In holding that the restraining order in question did not violate the right of free speech.

5. In affirming the order of the District Court.

V.

ARGUMENT.

Summary of the Argument.**Point A.**

A decree of confirmation entered in a corporate reorganization proceeding terminates the court's jurisdiction to consider any matter not specifically reserved in said decree or not necessary for the carrying out of the plan of reorganization.

Point B.

Conveyance of the debtor's property to a new corporation divests the court of jurisdiction to enter any restraining order unless such right was reserved in the decree of confirmation because a bankruptcy court under a reorganization proceeding has jurisdiction only over the debtor and its property.

Point C.

A restraining order which prohibits all persons from sending any general written communications to the creditors of the debtor corporation or the shareholders of the newly formed corporation which was the successor of the debtor, violates the right of the freedom of speech and writing guaranteed to each citizen by the Federal and Illinois State Constitutions.

Point D.

Where the restraining order violated is unconstitutional appellant could not legally be held in contempt for its violation.

Point A.

In a corporate reorganization proceeding a decree of confirmation terminates the Court's jurisdiction to consider any matters *de hors* the plan of reorganization.

The order restraining all persons from communicating with the bondholders of the debtor corporation or the stockholders of the successor corporation is on its face non-essential to the carrying out of any plan of reorganization. Communicating with those classes of people could neither interfere with nor aid any plan. That being true it cannot be argued that the restraining order was an essential step to carrying out the plan of reorganization. It is only the establishment of such contention that would confer upon the court jurisdiction to enter such order subsequent to the confirmatory decree.

Not only was the restraining order patently unnecessary to the carrying out of the plan of reorganization whatever that plan might be but the decree of confirmation itself made no reservation to enter any such type of order (Rec. 2 and 12).

According to the decisions in other jurisdictions the confirmatory decree concludes the court's jurisdiction except as to matters specifically reserved in it, or which are essential to the carrying out of the plan of reorganization.

Consolidated Gas Elec. L. & P. Co. v. United Railways & Elec. Co., 85 Fed. (2d) 799, 801, 802, 803 (CCA 4, Cert. den. 57 Sup. Ct. 493)

In Re Camden Rail & Harbor Terminal Corp., 35 Fed. Supp. 862, 867 (DCNJ).

Point B.

A Court of Bankruptcy has no jurisdiction to enter a restraining order after the debtor's property has been conveyed to a new corporation, so that it was no longer *in custodia legis*.

On June 1, 1939, the Court ordered the Trustee to convey the property of the Debtor to a new corporation, the 79th and Escanaba Corporation (Rec. 14). This conveyance was made and the Trustee's Deed recorded on June 7, 1939 (Rec. 42 (3)). Upon the conveyance out the Debtor had no property and the court lost jurisdiction. Sec. 77B (a) provides that the court shall have exclusive jurisdiction of the Debtor and its property. Even the petition on appellant for a rule to show cause was the petition of the new corporation and not of the Debtor and the order holding him in contempt so recited (Rec. 59). Upon the conveyance of the Debtor's property it was no longer *in custodia legis* and the Bankruptcy Court's power to enjoin was terminated. The Bankruptcy Court only has jurisdiction over the debtor and its property.

In re Adolph Goebel, Inc., 80 Fed. (2d) 849, 852 (CCA 2)

In re Lake's Laundry, Inc., 79 Fed. (2d) 326 (CCA 2).

The court was without authority to enter the order then not only because it had no jurisdiction over the property subsequent to its conveyance out from the Debtor, but also because the decree confirming the plan of reorganization as amended divested it of powers to restrain communications under any conditions to the shareholders of the new corporation, there being no reservations of such powers in the decree.

Point C.

The restraining order violated was a nullity in that it restricted the right of the freedom of speech and writing.

The order for which appellant was adjudged in contempt provides that:

“* * * all persons be and they hereby are restrained and enjoined from sending any general written communication to the creditors of the Debtor or the shareholders of the 79th & Escanaba Corporation without first having such communications approved by this court” (Rec. 37).

Article II, Sec. 4 of the Illinois Constitution, Smith-Hurd Ill. Anno. Statutes, Vol. on Constitution, Page 286, provides that: “Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty; * * *”. The order of the District Court in our case prohibits anyone from freely writing on all subjects. It will be noticed the order is neither limited in time nor subject matter. The purpose of the order must be left to mere conjecture. The order covers “all persons”.

The view has even been taken that a Judge's order is tantamount to a law so as to come within the sections of the State and Federal Constitutions prohibiting the passing of any law restraining the freedom of speech including the Fifth Amendment to the Federal Constitution.

16 *Corpus Juris Secundum*, 628

83 A. L. R. 193.

Where the restraining order violated is a nullity one cannot be held in contempt for its violation.

Federal Trade Commission v. Fairyfoot Products Co., 94 Fed. (2d) 844, 845 (CCA 7)

Beauchamp v. U. S., 76 Fed. (2d) 663 (CCA 9).

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision.

Respectfully submitted,

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